

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17<sup>th</sup> day of February, two thousand sixteen.

PRESENT:

DENNIS JACOBS,  
BARRINGTON D. PARKER,  
DEBRA ANN LIVINGSTON,  
*Circuit Judges.*

WU BING ZHANG,  
*Petitioner,*

v.

Loretta E. Lynch, UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

13-2040  
NAC

FOR PETITIONER: Michael Brown, New York, New York.

FOR RESPONDENT: Stuart F. Delery, Assistant Attorney General; Stephen J. Flynn, Assistant Director; Lynda A. Do, Attorney; Jeffrey R. Meyer, Attorney, Civil

1                                   **Division, Office of Immigration**  
2                                   **Litigation, United States Department**  
3                                   **of Justice, Washington D.C.**  
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5           UPON DUE CONSIDERATION of this petition for review of a  
6   Board of Immigration Appeals ("BIA") decision, it is hereby  
7   ORDERED, ADJUDGED, AND DECREED that the petition for review  
8   is DENIED.

9           Petitioner Wu Bing Zhang, a native and citizen of  
10   China, seeks review of a May 2, 2013 decision of the BIA  
11   affirming a June 3, 2011, decision of an Immigration Judge  
12   ("IJ") denying Zhang's application for asylum, withholding  
13   of removal and relief under the Convention Against Torture  
14   ("CAT"). *In re Wu Bing Zhang*, No. A087 446 563 (B.I.A. May  
15   2, 2013), *aff'g* No. A087 446 563 (Immig. Ct. N.Y. City June  
16   3, 2011). We assume the parties' familiarity with the  
17   underlying facts and procedural history in this case.

18           Given the circumstances of this case, we have reviewed  
19   both the IJ's and the BIA's opinions "for the sake of  
20   completeness." *Zaman v. Mukasey*, 514 F.3d 233, 237 (2d Cir.  
21   2008) (per curiam). The applicable standards of review are  
22   well established. See 8 U.S.C. 1252(b)(4)(B); see also  
23   *Weng v. Holder*, 562 F.3d 510, 513 (2d Cir. 2009).

1           In the main, Zhang challenges the denial of his asylum  
2 application as untimely. The Immigration and Nationality  
3 Act strips the federal courts of jurisdiction to review the  
4 agency's finding that an asylum application was untimely. 8  
5 U.S.C. §§ 1158(a)(3); 1158(a)(2)(B). Notwithstanding that  
6 provision, we retain jurisdiction to review constitutional  
7 claims and "questions of law" arising from untimeliness  
8 determinations. 8 U.S.C. § 1252(a)(2)(D). To determine  
9 whether jurisdiction exists in a particular case, we must  
10 "study the arguments asserted" and ask, "regardless of the  
11 rhetoric employed in the petition, whether it merely  
12 quarrels over the correctness of the factual findings or  
13 justification for the discretionary choices, in which case  
14 the court would lack jurisdiction, or whether it instead  
15 raises a 'constitutional claim' or 'question of law,'" in  
16 which case those particular issues could be addressed. *Xiao*  
17 *Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 329 (2d Cir.  
18 2006); see also *Liu v. I.N.S.*, 508 F.3d 716, 720 (2d Cir.  
19 2007).

20           Zhang's arguments fall squarely into the category of  
21 mere quarrels. He points to his own testimony and contends  
22 that the IJ erred in three respects: by requiring

1 corroborating documents; by declining to credit Zhang's  
2 explanations for those documents' unavailability; and by  
3 giving insufficient weight to the one document that Zhang  
4 did produce. Zhang frames these arguments as legal errors  
5 committed by the IJ. At bottom, however, he contends that  
6 the IJ should have given his testimony and document more  
7 weight - enough to meet his burden of proof. He thus  
8 "disputes the correctness of [the] IJ's fact-finding," an  
9 issue over which this Court has no jurisdiction. *Xiao Ji*  
10 *Chen*, 471 F.3d at 329.

11 Zhang also challenges the BIA's denial of his motion to  
12 remand his case to the IJ. We have jurisdiction to review  
13 that decision.

14 "A motion to remand that relies on newly available  
15 evidence is held to the substantive requirements of a motion  
16 to reopen." *Li Yong Cao v. U.S. Dep't of Justice*, 421 F.3d  
17 149, 156 (2d Cir. 2005). A motion to reopen "shall not be  
18 granted unless it appears to the Board that evidence sought  
19 to be offered is material and was not available and could  
20 not have been discovered or presented at the former  
21 hearing." 8 C.F.R. § 1003.2(c)(1). "To prevail on the  
22 motion, the movant must also establish *prima facie*  
23 eligibility for asylum, i.e., 'a realistic chance' that he

1 will be able to establish eligibility." *Poradisova v.*  
2 *Gonzales*, 420 F.3d 70, 78 (2d Cir. 2005). This Court  
3 reviews the BIA's denial of a motion to reopen for abuse of  
4 discretion, mindful that such motions are "disfavored." *Ali*  
5 *v. Gonzales*, 448 F.3d 515, 517 (2d Cir. 2006) (citing *I.N.S.*  
6 *v. Doherty*, 502 U.S. 314, 322-23 (1992)).

7 The BIA did not abuse its discretion when it concluded  
8 that Zhang could have presented his new submissions at his  
9 merits hearing. Zhang produced four new documents with his  
10 motion to remand: an affidavit and permanent resident card  
11 from the friend who met him upon his arrival in New York;  
12 his own affidavit; and a record from a Chinese hospital. In  
13 his brief to the BIA, Zhang explained that after the merits  
14 hearing, he located (and reconciled with) his friend and  
15 recalled receiving treatment at a hospital in China. He did  
16 not, however, explain why he could not have handled these  
17 tasks prior to his merits hearing. Consequently, the BIA  
18 did not abuse its discretion in denying the motion.

19 The government moves to dismiss Zhang's petition  
20 insofar as it challenges the denial of asylum, and seeks  
21 summary denial of the petition insofar as it challenges the  
22 denial of Zhang's motion to remand. We have considered the  
23 merits brief submitted by Zhang, and we treat the

1 government's motion as a response to it. For the foregoing  
2 reasons, the petition for review is DENIED and the  
3 government's motion is DENIED as moot.

4 FOR THE COURT:  
5 Catherine O'Hagan Wolfe, Clerk  
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